

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY *[Signature]* D.C.
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THOMAS L. GOULD
CLERK, U.S. DISTRICT COURT
W.D. OF TENNESSEE

LYNDA HAYMON,)	
)	
Plaintiff,)	
)	
v.)	No. 03-2308 M1/P
)	
JO ANNE B. BARNHART,)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	

ORDER GRANTING PLAINTIFF'S MOTION FOR AWARD OF ATTORNEY'S FEES
PURSUANT TO THE EQUAL ACCESS TO JUSTICE ACT

Before the Court is Plaintiff Lynda Haymon's Motion for Award of Attorney's Fees Pursuant to the Equal Access to Justice Act 28 U.S.C. Section 2412, filed December 30, 2004. On January 12, 2005, Defendant filed a response and informed the Court that it does not object to Plaintiff's request. For the reasons set forth below, the Court GRANTS Plaintiff's request for attorney's fees.

I. Background

The instant application for attorney's fees arises out of Plaintiff's appeal from a decision of the Commissioner of Social Security, Jo Anne B. Barnhart ("Defendant"), denying Plaintiff's application for disability insurance benefits under Title II of the Social Security Act, 42, U.S.C. §§ 401 et seq. Plaintiff's appeal was referred to the United States Magistrate Judge for a report and recommendation, pursuant to 28 U.S.C. § 636(b)(1), on March 3,

2004. The Magistrate Judge issued a Report and Recommendation on August 4, 2004. The Court adopted the Report and Recommendation on September 29, 2004, remanding the case for reconsideration and further findings. Plaintiff filed the instant motion for attorney's fees on December 30, 2004. Defendant does not object to Plaintiff's request for fees or to the amount requested.

II. Applicable Law and Analysis

Plaintiff requests an award of attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, in the amount of \$2,662.50. This figure is based on 21.3 hours of work Plaintiff's attorney, Roger Stanfield, spent on Plaintiff's appeal at an hourly rate of \$125.00.

The Equal Access to Justice Act ("EAJA") provides, in pertinent part, that:

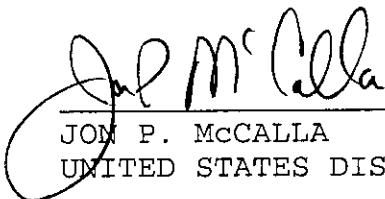
a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

28 U.S.C. § 2412(d)(1)(A). As defined under the EAJA, a "party" means "an individual whose net worth did not exceed \$2,000,000 at the time the civil action was filed" § 2412(d)(2)(B). The Supreme Court has held that a remand order from a district court

confers "prevailing party" status on the party requesting attorney's fees and constitutes a "final judgment" for EAJA purposes. Shalala v. Schaefer, 509 U.S. 292, 300 (1993).

Having reviewed the record and the parties' submissions, the Court finds that Plaintiff has satisfied the statutory criteria for an award of attorney's fees pursuant to the EAJA. Plaintiff is a prevailing party under the meaning of the EAJA, and this Court's order of September 29, 2004, remanding the case for reconsideration and further findings constitutes a "final judgment" pursuant to the EAJA. Finally, no evidence that "the position of the United States was substantially justified or that special circumstances make an award unjust" has been presented to the Court. Indeed, Defendant does not object to Plaintiff's request for attorney's fees. Accordingly, the Court GRANTS Plaintiff's motion for attorney's fees in the amount of \$2,662.50, to be paid directly to Plaintiff's attorney.

So ORDERED this 29 day of November, 2005.



JON P. MCCALLA
UNITED STATES DISTRICT JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 25 in case 2:03-CV-02308 was distributed by fax, mail, or direct printing on November 30, 2005 to the parties listed.

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Honorable Jon McCalla
US DISTRICT COURT